

FOREST
APPEALS
COMMISSION

Annual Report

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Forest Appeals Commission

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The Honourable Jim Doyle
Minister of Forests

The Honourable Joan Sawicki
Minister of Environment, Lands and Parks

The Honourable Dan Miller
Minister of Energy Mines and
Minister Responsible for Northern Development

Parliament Buildings
Victoria, British Columbia
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Dear Ministers:

I respectfully submit herewith the annual report of the Forest Appeals Commission for the period January 1, 1999 to December 31, 1999.

Yours truly,

Toby Vigod
Chair
Forest Appeals Commission



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Forest Appeals Commission

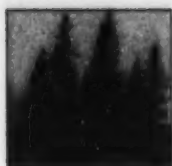
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Introduction

The Forest Appeals Commission is an independent tribunal that was established under the *Forest Practices Code of British Columbia Act* (the "Code") which came into effect on June 15, 1995. The Commission hears appeals from decisions made under the Code, and, as of April 1999, appeals from decisions made under the *Forest Act* and the *Range Act*. The Commission is also required to make recommendations to the Lieutenant Governor in Council (Cabinet) about review and appeal procedures under these statutes.

This is the fifth annual report of the Forest Appeals Commission. The information contained in this Annual Report covers the twelve month period of time from January 1, 1999 to December 31, 1999.

This report describes the structure and function of the Commission and how the appeal process operates. As required by the *Administrative Review and Appeal Procedure Regulation*, this report also contains:

- the number of appeals initiated during the report period;
- the number of appeals completed during the report period;
- the resources used in hearing the appeals;
- a summary of the results of appeals completed in the report period;

- evaluation of the review and appeal processes; and,
- recommendations for amendments to the Code, the *Forest Act*, and the *Range Act* and their regulations respecting reviews and appeals.

Finally, summaries of appeals filed and the decisions made by the Commission during the report period are provided, legislative amendments affecting the Commission are described, and relevant sections of the Code, the *Forest Act*, the *Range Act*, and the *Administrative Review and Appeal Procedure Regulation* are reproduced.

Decisions of the Commission are available for viewing at the Forest Appeals Commission office, on the internet, and at the following libraries:

- Legislative Library
- Ministry of Environment, Lands and Parks Library
- Ministry of Forests Library
- University of British Columbia Law Library
- University of Victoria Law Library
- British Columbia Courthouse Library Society
- West Coast Environmental Law Association Law Library

Information about the Forest Appeals Commission is available from the Forest Appeals Commission office, local offices of the Ministry of Forests, selected libraries and on the internet.

More detailed information on the Commission's policies and procedures can be found in the Forest Appeals Commission Procedure Manual which can be obtained from the Commission office or viewed on the internet. Also, please feel free to contact the office with any questions, or for additional copies of this report. The Commission can be reached at:

Forest Appeals Commission

Fourth Floor, 836 Yates Street
Victoria, British Columbia

Telephone: (250) 387-3464

Facsimile: (250) 356-9923

Internet: <http://www.fac.gov.bc.ca>

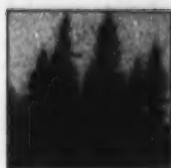
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The Commission

The Forest Appeals Commission is an independent agency which provides a forum to appeal certain decisions made by government officials. The Commission is also responsible for providing Cabinet with an evaluation of the appeal and review processes and with recommendations for amendments to the Code, the *Forest Act*, the *Range Act* and their regulations respecting reviews and appeals.

Commission Membership

Commission members are appointed by Cabinet. Their appointments may be for a term of up to three years.

Members of the Commission represent diverse business and technical experience and hold a wide variety of perspectives. Commission membership consists of a full-time chair, a part-time vice-chair and a number of part-time members.

The Commission for this report period consisted of the following members:

Forest Appeals Commission

MEMBER	FROM
Toby Vigod, Chair	Victoria
Gerry Burch, Vice-chair	Vancouver
Annie Booth (to March 21, 1999)	Prince George
Bruce Devitt	Victoria
Kristen Eirikson	Victoria
Barbara Fisher	Vancouver
James Hackett (from March 21, 1999)	Nanaimo
Jack Krantz (from March 21, 1999)	Prince George
Rob Kyle (to March 21, 1999)	Coquitlam
Jeanette Leitch (from March 21, 1999)	Vancouver
Katherine Lewis	Prince George
Patricia Marchak	Vancouver
Brenda Milbrath (from March 21, 1999)	Victoria
Monty Mosher (to March 21, 1999)	Victoria
David Ormerod	Victoria
Stephen Potter (from March 21, 1999)	North Vancouver
Carol Roberts (to March 21, 1999)	Victoria
Howard Saunders	Vancouver
Lorraine Shore (from March 21, 1999)	Vancouver
Andrew Thompson (to March 21, 1999)	Nanoose Bay
Geza Toth	Vernon
David Walkem	Spences Bridge

Administrative Law

Unlike a court, the Commission is not bound by its own precedents; present cases of the Commission do not necessarily have to be decided in the same way that old ones were. The Commission is governed by the principles of administrative law and, as such, must treat all of the parties involved in a hearing fairly, giving each party a chance to explain its position.

The Commission Office

The Commission office staffs nine full-time employees reporting to a General Counsel/Executive Director and the Chair. The office provides registry services, legal advice, research support, systems support, financial and administrative services, training, and communications support for the Commission.

The Commission shares its staff and its office space with the Environmental Appeal Board and the Environmental Assessment Board.

The Environmental Appeal Board is an independent tribunal which hears appeals from administrative decisions made under six statutes: the *Pesticide Control Act*, the *Waste Management Act*, the *Water Act*, the *Wildlife Act*, the *Commercial River Rafting Safety Act*, and the *Health Act*.

The Environmental Assessment Board is established under the *Environmental Assessment Act*. This Act establishes a formal method for the review and assessment of environmental, economic, social, cultural, heritage and health effects of major projects. The Environmental Assessment Board may be required to conduct a public hearing as part of the process.

Until April 1999, the Forest Appeal Board heard appeals from administrative decisions made under the *Forest Act* and the *Range Act*. The Commission office provided administrative support

to the Board until that time. Legislative changes came into force in April 1999, which provide that the Commission now hears appeals under the *Forest Act* and the *Range Act*. However, the Board continues to hear appeals that were filed before the legislative changes came into force.

Each of the tribunals sharing the office operates completely independently of one another. Supporting several tribunals through one administrative office gives them access to greater resources while, at the same time, cutting down on bureaucracy and costs. In this way, expertise can be shared, and work can be done more efficiently.

Commission Resources

The fiscal 1999/2000 budget for the Forest Appeals Commission was \$365,000.

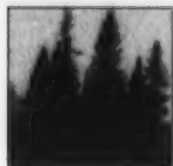
Policy on Freedom of Information

The appeal process is public in nature. Information provided by one party must also be provided to all other parties to the appeal. Further, the hearings are open to the public.

If information is requested by a member of the public regarding an appeal, that information may be disclosed. The Commission is subject to section 163 of the Code, which deals with confidentiality and disclosure, and the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act.

Unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act* it will be disclosed.

Parties to appeals should be aware that information supplied to the Commission will be subject to public scrutiny and review.



The Appeal Process

Appeals Under the Forest Practices Code of British Columbia Act

Not all determinations made under the Code can be appealed to the Commission. The Code specifies that only certain types of determinations are appealable. These include the following:

- orders to abate or remove a fire hazard;
- determinations regarding fire control or suppression;
- orders regarding unauthorized construction or occupation of a building in a Provincial forest;
- orders regarding the unauthorized storage of hay on a Crown range, or range development;
- orders regarding unauthorized construction of trail or recreation facilities on Crown land;
- orders relating to the control of insects, disease, etc.;
- penalties for contravention of the Act, regulations, standards or an operational plan;
- remediation orders and stop work orders; and,
- notices of determination that a person contributed to fire.

These types of determinations cannot be appealed to the Commission unless they have first been reviewed by a reviewer. The review of a deter-

mination may be initiated by the Forest Practices Board or by a person subject to the determination. The Forest Practices Board alone may request a review regarding approval or amendment of a forest development plan or range use plan. Further information regarding the review process may be obtained from the local offices of the Ministry of Forests or the Ministry of Environment, Lands and Parks.

If the Forest Practices Board, or the person subject to the determination, disagrees with the decision of the reviewer either one, or both, may appeal the review decision to the Commission.

Appeals Under the Forest Act

Appealable decisions under the Forest Act are set out in section 146 of that Act and include certain determinations, orders and decisions made by district or regional managers, employees of the Ministry of Forests, and the chief forester. The subjects of appealable decisions include matters such as the determination of stumpage and the suspension of rights under a licence or agreement.

Certain decisions of the chief forester may be appealed to the Commission without prior review. However, determinations, orders or decisions made by a district or regional manager, or employee

of the Ministry, must be reviewed by a reviewer before they may be appealed to the Commission. If the person who is subject to the decision, or the person in respect of whose agreement a decision is made, disagrees with the review decision, they may appeal the review decision to the Commission.

Appeals Under the Range Act

The following determinations, orders and decisions under the *Range Act* are appealable to the Commission:

- determinations, orders and decisions by a forest officer or district manager relating to the suspension of all or some of the rights granted under a licence or permit;
- determinations, orders and decisions by a district manager relating to the reinstatement of suspended rights; and,
- determinations, orders and decisions by a district manager relating to the cancellation of suspended rights or the cancellation of a licence or permit where rights were under suspension.

These determinations, orders or decisions cannot be appealed to the Commission unless they have first been reviewed by a reviewer. If the person subject to the decision, or the person in respect of whose agreement a decision is made disagrees with the review decision, they may appeal the review decision to the Commission.

Further information regarding the review processes under the *Forest Act* and the *Range Act* may be obtained from the local Ministry of Forests' offices.

Commencing an Appeal

Notice of Appeal

To commence an appeal, an appellant must prepare a Notice of Appeal and deliver it to the Forest Appeals Commission office within three weeks of the date the review decision is served on them. The Notice of Appeal must contain the name and address of the appellant, the reasons why the appellant believes that the review decision is incorrect (the grounds for appeal), and the type of order the appellant is seeking from the Commission. The Notice of Appeal should also include the name and mailing address of the government officials responsible for the original determination and the review decision. In some cases, the review decision must be provided.

If the Commission does not receive the Notice of Appeal within three weeks of the review decision, the appellant will lose the right to appeal. However, the Chair, or a member of the Commission, may extend the deadline either before or after the time limit expires.

If the Notice of Appeal is missing any of the required information, the Commission will notify the appellant of the deficiencies. The Commission may refrain from taking any action on an appeal until the Notice is complete and any deficiencies are corrected.

Once a Notice of Appeal is accepted as complete, the Commission will notify the Ministry whose officials made the determination, and the review decision being appealed, that it will be the respondent in the appeal.

Filing An Appeal

An appeal can be commenced under the *Forest Practices Code* by:

The Forest Practices Board



The person who was the subject of a decision

Appealable decisions under the *Forest Practices Code* are:

Administrative decisions that have undergone
review by a reviewer

An appeal can be commenced under the *Forest Act or Range Act* by:

The person in respect of whom a determina-
tion, order or decision was made



The person in respect of whose agreement the
determination, order or decision was made

Appealable decisions under the *Forest Act or Range Act* are:

Administrative decisions by a district or regional
manager, or by employees of the ministry, that have
undergone review by a reviewer

Administrative decisions by the chief forester

A Notice of Appeal consists of:

the appellant's name and address, along with the name and address of anyone representing him or her



the address to which the appellant wants notice and other official documents to be delivered



the name and mailing address of the government official responsible for the review decision



the grounds for appeal



description of the relief requested

(i.e. what decision the appellant would like the Commission to make)



if the appeal is from a determination as varied by the reviewer,
a copy of the review decision must be provided with the Notice of Appeal

Third Party Status

The Code provides that, at any stage of an appeal, the Commission may grant third party status to a person who may be affected by the appeal.

Where the Forest Practices Board is not an appellant, the Commission will add the Board as a party to the appeal at the Board's request.

The Forest Act and the Range Act provide that only the appellant and the government are parties to appeals under those Acts.

Intervenors

The Code enables a person not directly affected by a decision to be invited or permitted by the Commission to participate as an intervenor to the extent that the Commission allows. The Forest Act and the Range Act do not provide for intervenor participation.

Persons wishing to take part in an appeal under the Code as an intervenor should inform the Commission of their desire, and outline the reasons for their participation in the appeal.

If the Commission allows a person to participate as an intervenor, it will give written notice to the intervenor, and the parties involved in the appeal, specifying the extent to which the intervenor will be permitted to take part in the hearing.

Type of Hearing

The Commission has the authority to conduct a new hearing and make a new decision on a matter before it (i.e. hearing *de novo*).

An appeal may be conducted by way of written submissions, oral hearing or a combination of both. In most cases, the Commission will conduct an oral hearing. However, in some instances the Commission may find it appropriate to order a hearing to proceed by way of written submissions.

Prior to ordering that a hearing be conducted by way of written submissions, the Commission may request input from the parties.

Written Hearing Procedure

If it is determined that the hearing will be by way of written submissions, the submissions will be made by all parties and intervenors. The appellant will provide its submissions first. The other parties will have an opportunity to respond to the appellant's submissions when making their own submissions.

The appellant is then given an opportunity to comment on the submissions and evidence provided by the other parties.

Finally, all parties will be given the opportunity to provide closing submissions. Closing submissions are not to contain new evidence.

Oral Hearing Procedure

As required by the *Administrative Review and Procedure Regulation*, the Commission will, within 30 days of receiving and accepting an appeal, determine which members will hear the appeal. At that time, the Commission will also set the date, time and location of the hearing. If the appeal is under the Forest Act or the Range Act, the hearing must be held within 45 days from the time the Commission receives the Notice of Appeal unless all parties agree to a period other than 45 days.

When the date for a hearing is set, the parties involved will be notified. If any of the parties to the appeal cannot attend the hearing on the date scheduled, a request may be made to the Commission to change the date.

An oral hearing may be held in the locale closest to the affected parties, at the Commission office in Victoria, a combination of both, or

anywhere in the province. The Commission will decide where the hearing will take place on a case by case basis.

Once a hearing is scheduled, the parties will be asked to provide certain materials to the Commission.

Statement of Points

To help identify the main issues to be addressed in the hearing, and the arguments that will be presented in support of those issues, all parties to the appeal are requested to provide the Commission, and each of the parties to the appeal, with a written Statement of Points and all relevant documents.

The Commission requires that the appellant submit its Statement of Points and documents at least 30 days prior to the commencement of the hearing. The respondent and all other parties are required to submit their Statements of Points and documents at least 15 days prior to the commencement of the hearing. Each party is to ensure that the Commission, and all other parties to the appeal, receive a copy of their Statement of Points and documents within the set time frames.

The Statement of Points is, essentially, a summary of each party's case. As such, the content of each party's Statement of Points will depend on whether the party is appealing the decision or attempting to uphold the decision being appealed.

The Commission asks that the following information be contained in the respective party's Statement of Points:

- (a) The appellant should outline:
 - (i) the substance of the appellant's objections to the decision of the respondent;
 - (ii) the arguments which the appellant will present at the hearing;
 - (iii) any legal authority or precedent supporting the appellant's position; and,

- (iv) the names of the people the appellant intends to call as witnesses at the hearing.

- (b) The respondent should outline:

- (i) the substance of the respondent's objections to the appeal;
 - (ii) the arguments which the respondent will present at the hearing;
 - (iii) any legal authority or precedent supporting the respondent's position; and,
 - (iv) the names of the people the respondent intends to call as witnesses at the hearing.

Additional hearing participants that are granted party status or intervenor status are also asked to provide a Statement of Points outlining the above-noted points as may be relevant to that party.

Where a party has not provided the Commission with a Statement of Points by the specified date, the Commission has the authority to order the party to do so.

Pre-hearing Conference

Either before or after the Statements of Points and relevant documents have been exchanged, the Commission, or any of the parties, may request a pre-hearing conference.

Pre-hearing conferences provide an opportunity for the parties to discuss any procedural issues or problems, to resolve the issues between the parties, and to deal with any preliminary concerns.

A pre-hearing conference will normally involve the spokespersons for the parties, one Commission member and one staff member from the Commission office. It will be less formal than a hearing and will usually follow an agenda which is set by the participants. The parties are given an opportunity to resolve the issues themselves giving them more control over the process.

It may be that a pre-hearing conference will resolve the issues between the parties and there will be no need for a full hearing. Conversely, it may be that nothing will be agreed upon and the appeal will move to a hearing.

Disclosure of Expert Evidence

The Commission is not bound by the provisions relating to expert evidence in the British Columbia Evidence Act. However, the Commission does require that reasonable advance notice of expert evidence be given and that the notice include a brief statement of the expert's qualifications and areas of expertise, the opinion to be given at the hearing, and the facts on which the opinion is based.

Summons

The Commission has the power to summon witnesses to give evidence at a hearing and bring documents related to the hearing.

If a party wants to ensure that an important witness attends the hearing, the party may write to the Commission asking that a summons be issued and providing their reasons for the request.

The Hearing

A hearing is a more formal process than a pre-hearing conference, and allows the Commission to receive the evidence it uses in making a decision.

In an oral hearing, each party will have a chance to present evidence. Each party will have an opportunity to call witnesses and explain its case to the Commission.

Although hearings before the Commission are less formal than those before a court, some of the hearing procedures are similar to those of a court: parties are sworn or affirmed, evidence is presented and witnesses may be cross-examined.

Parties to the appeal may have lawyers representing them at the hearing but this is not required. The Commission will make every effort to keep the process open and accessible to parties not represented by a lawyer.

All hearings of the Commission are open to the public.

Rules of Evidence

The rules of evidence used in a hearing are less formal than those used in a court. The Commission has full discretion to receive any information it considers relevant and then will determine what weight to give the evidence.

The Decision

In making its decision, the Commission is required to determine, on a balance of probabilities, what occurred, and to decide between the rights of parties.

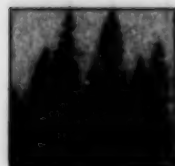
The Commission will not normally make a decision at the end of the hearing. Instead, in the case of both an oral and written hearing, the final decision will be given in writing within a reasonable time following the hearing. Copies of the decision will be given to the parties, the intervenors, and the appropriate minister(s). In an appeal under the *Forest Act* or the *Range Act*, the Commission is required to serve its decision on the parties within 21 days after the conclusion of the hearing.

If a party disagrees with the decision of the Commission, that party may appeal the decision to the British Columbia Supreme Court. This appeal must be made within 3 weeks of being served with the Commission's decision. A party may only appeal the Commission's decision on a question of law or jurisdiction.

Where a decision is appealed to the Supreme Court, the court may confirm, reverse or vary the decision, or make any order the court considers just in the circumstances.

Costs

The Commission also has the power to award costs. If the Commission finds it is appropriate, it may order that a party or intervenor pay another party or intervenor any or all of the actual costs of the appeal.



Legislative Amendments Affecting the Commission

On July 29, 1997, Bill 47, the *Forest Statutes Amendment Act, 1997* was passed. The purpose of Bill 47 is to streamline forest legislation in the province. It amends sections of the *Forest Act*, the *Range Act* and the *Code*. Bill 47 amendments concerning the review and appeal sections of these statutes came into force in April 1999. Before these amendments came into force, the Commission heard appeals under the *Code*, while the Forest Appeal Board heard appeals under the *Forest Act* and the *Range Act*. Appeals under all three statutes are now heard by the Commission.

As part of this streamlining and harmonization process, the *Administrative Review and Appeal Procedure Regulation* (B.C. Reg. 114/99) replaced the *Forest Act* and the *Code* regulations concerning administrative reviews and appeals. The new regulation consolidated the review and appeal procedures into one regulation.

For the most part, the appeal procedures and powers of the Commission have not been changed. However, the \$25 fee formerly required for filing an appeal with the Commission is no longer required.

Further amendments related to the review, appeal and enforcement sections of the *Code* are expected to come into force in the near future.

Amendments Not Yet in Force

Reviews and Appeals

A provision has been added to the *Code* that allows reviewers to refer a question of law to the Commission in certain circumstances, if permitted by regulation. However, there is currently no regulation in force that permits such a referral to the Commission.

The list of determinations under the *Code* that may be reviewed and subsequently appealed has also been amended. A number of new sections have been added, reflecting the amendments to the administrative remedies provisions, and a few sections have been removed. For example new provisions are contemplated for appeals of contravention determinations and performance evaluations.

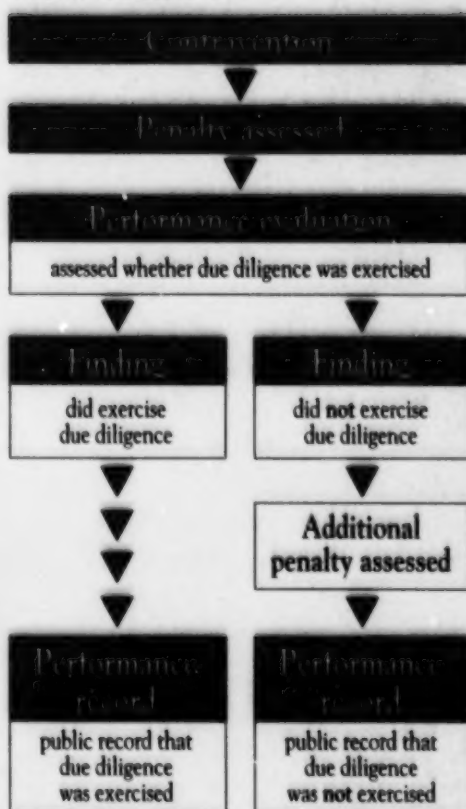
Enforcement

The enforcement sections of the *Code* will undergo significant amendments as a result of Bill 47. Eight new sections will be added to the Administrative Remedies Division of the *Code* and a number of sections will be repealed and replaced.

Prior to the amendments, if it was determined that a contravention had occurred, a senior official would assess a penalty for the contravention; this could include assessing a zero penalty. In assessing the amount of a penalty, the Code provided that a senior official must consider any policy established by the Minister and may consider a list of factors provided. Under the amendments, this process will be changed (see FLOW CHART 1). After assessing the amount of the initial penalty for the contravention, the senior official will conduct a performance evaluation to determine whether reasonable care (due diligence) was taken to avoid the contravention. If it is determined that due diligence was not exercised, the senior official may levy a penalty in addition to the initial penalty. The senior official is provided with a list of factors that he or she must take into account when determining the amount of the additional penalty.

The government will be required, by the amendments, to keep public performance records of who has exercised due diligence and who has not.

FLOW CHART 1



▲ This chart provides a brief overview of the new enforcement process under the Code.

Nisga'a Final Agreement Act

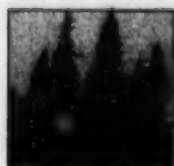
The *Nisga'a Final Agreement Act* received royal assent on April 26, 1999 in the British Columbia Legislature. It provides that:

During the transition period [the 5 year period commencing on the effective date], the Nisga'a Nation may commence, or intervene in, an appeal to the Forest Appeals Commission in respect of:

- (a) A determination of whether a person has contravened forest practices legislation on or affecting Nisga'a Lands; or

- (b) The determination of whether to impose a penalty referred to in paragraphs 51 and 52 and the amount of that penalty.

At the time of writing of this report, the Act is before the Federal Parliament (House of Commons) as Bill C-9 and has passed First Reading on December 14, 1999 and Second Reading on February 10, 2000.



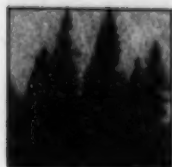
Evaluation and Recommendations

Under the *Administrative Review and Appeal Procedure Regulation* and section 197 of the *Code*, the Commission is mandated to annually evaluate the review and appeal process and identify any problems that have arisen. The Commission is also required to make recommendations on amendments to the *Code*, *Forest Act* and the *Range Act* and their regulations respecting reviews and appeals.

For the second consecutive year, the number of appeals filed has decreased relative to the number of appeals filed in the previous year. The Commission speculates that this may be due to the economic downturn in the forest sector, reduced forest activities, and increased compliance with the *Code*.

In the Commission's 1998 Annual Report, it recommended that the responsible Ministers strive to bring into force the changes to the review and appeal provisions that were enacted under Bill 47, 1997. The Commission is pleased to note that the changes to the appeal process that give the Commission jurisdiction over appeals under the *Forest Act* and the *Range Act* came into effect in April 1999. The bringing into force of these amendments has been a positive change that provides for a more effective and efficient appeal process.

However, many of the other changes that were enacted under Bill 47 have not yet been brought into force. The Commission is accordingly unable to provide any comment on those provisions at this time.



Appeals Filed

As noted earlier, the amendments which expanded the Commission's jurisdiction to include appeals under the *Forest Act* and the *Range Act*, did not come into force until April 1999. Accordingly, the Forest Appeal Board was still in operation during this fiscal year and the appeals filed with the Board, and the decisions rendered by the Board, have been reported on separately.

In 1999, eight appeals were filed with the Commission, and three appeals were filed with the Board. Summaries of each of the appeals that were filed are provided below. The status of each of the appeals as of December 31, 1999, is provided after each summary.

Forest Appeals Commission

99-FOR-01 Sintich Enterprises v. Government of British Columbia

Appeal filed June 23, 1999

Sintich Enterprises filed an appeal against a review decision upholding a determination concerning the disposal of mountain pine beetle-infested lodgepole pine trees.

▶ **STATUS:** Appeal Withdrawn

99-FOR-02 Forest Practices Board v.

Government of British Columbia

Appeal filed July 12, 1999

The Forest Practices Board filed an appeal against a review decision rescinding a Stop Work Order issued against Gloria O'Brien for contravention of the terms of a Timber Sale Licence, a Road Permit and section 13(1)(c)(vi) the *Forest Road Regulation*.

▶ **STATUS:** Hearing held July 27 and 28, 1999

Decision issued March 8, 2000

99-FOR-03 Carrier Lumber Ltd. v. Government of British Columbia

Appeal filed August 3, 1999

Carrier Lumber Ltd. filed an appeal against a review decision upholding a determination in which a penalty of \$500 was assessed for contravening section 70(4)(d) of the *Code*.

▶ **STATUS:** Held in abeyance pending a court decision

99-FOR-04 Forest Practices Board v. The Pas Lumber Company Ltd. and Government of British Columbia

Appeal filed November 22, 1999

The Forest Practices Board filed an appeal against a review decision which varied two determinations. In both cases the review decision upheld the finding that The Pas Lumber Company Ltd. had

contravened section 67(1)(e), (f) and (2)(d) of the Code. However, the Reviewer reduced the original contravention penalties set by the Manager to zero.

ATUS: Consent Order issued
December 15, 1999

99-FOR-05 Forest Practices Board v.
Government of British Columbia and Takla
Development Corporation
Appeal filed December 13, 1999

The Forest Practices Board filed an appeal against a review decision which referred a determination made against Takla Development Corporation back to the District Manager with instructions to consider the Review Panel's interpretation of section 67(2)(d) of the Code, its rationale, and the method for calculating the value of the penalty.

ATUS: Hearing scheduled for March 23, 2000

99-FOR-06 Rudolph and Celia Harfman v.
Government of British Columbia
Appeal filed December 14, 1999

Rudolph and Celia Harfman filed an appeal against a review decision confirming two determinations. The review decision confirmed the suspension of the Harfman's right to graze livestock on the Summit Pasture and the cancellation of their grazing licence for contravening sections 27, 74 and 98 of the Code.

ATUS: Hearing held February 29 to
March 2, 2000 and continues
April 10-12, 2000
Decision Pending

99-FOR-07 Gloria O'Brien, Randy O'Brien and
O'Brien and Fuerst Logging Ltd. v. Government of
British Columbia

Appeal filed December 14, 1999

Gloria O'Brien filed an appeal against a review decision which varied a determination. The review decision upheld the finding that section 96(1) of the Code had been contravened, but reduced the penalty from \$100,000 to \$80,242.17.

ATUS: Adjourned to the fall of 2000,
dates not yet confirmed

99-FOR-08 Slokan Forest Products Ltd. v.
Government of British Columbia
Appeal filed December 15, 1999

Slokan Forest Products filed an appeal against a review decision which varied a determination. The Review Panel assessed a penalty of \$1,500 for contraventions of section 64(1)(d) of the Code and sections 19 and 20(e) of the Forest Road Regulation.

ATUS: Hearing scheduled for May 31, 2000

Forest Appeal Board

99-FAB-01 MacMillan Bloedel Limited v. The
Province of British Columbia (Ministry of
Forests)

Appeal filed January 26, 1999

MacMillan Bloedel Limited filed an appeal against a review decision upholding three Stumpage Advisory Notices issued by the Regional Appraisal Coordinator.

ATUS: Hearing held on February 16 and 17,
2000 and scheduled to be completed on
April 19 and 20, 2000

**99-FAB-02 Laurie Parker and Family Cattle Co.
Ltd. v. The Province of British Columbia
(Ministry of Forests)**

Appeal filed April 7, 1999

Laurie Parker and the Family Cattle Company Ltd. filed an appeal against a review decision upholding a determination that Laurie Parker and the Family Cattle Company Ltd. had contravened section 138 of the *Forest Act*, which prohibits the cutting of Crown timber without authorization. The review decision also upheld the decision to assess stumpage, a penalty, and surveying costs for the contravention.

STATUS: Hearing held July 27 and 28, 1999

Decision issued August 18, 1999

**99-FAB-03 Western Forest Products Ltd. v.
Province of British Columbia (Ministry of
Forests)**

Appeal filed November 12, 1999

Western Forest Products Ltd. filed an appeal against a review decision upholding a Stumpage Advisory Notice issued by the Regional Appraisal Coordinator.

STATUS: Hearing scheduled for

March 30 and 31, 2000



Decisions

January 1, 1999 – December 31, 1999

The following are summaries of decisions rendered by the Forest Appeals Commission and the Forest Appeal Board during 1999.

Forest Appeals Commission

97-FOR-23 Slocan Forest Products Ltd. v.
Government of British Columbia (Forest Practices
Board, Third Party)

Decision Date: March 20, 1999

Panel: Rob Kyle, Kristen Eirikson, Monty Mosher

This was an appeal by Slocan Forest Products Ltd. against a review decision upholding a determination of the District Manager that Slocan had not carried out proper road maintenance and deactivation measures on a forest road in the Morkill River Valley, in contravention of sections 63(1) and 64(1) of the *Code*, and sections 17(1) and 20(c) of the *Forest Road Regulation*. Slocan also appealed an administrative penalty of \$14,000 upheld by the review decision. It sought to have the contraventions rescinded and the penalty set aside.

The Commission found that Slocan did not inspect and repair the road to minimize sediment transport from the road to a nearby creek and, therefore, upheld the determination of contraventions under sections 17(1) of the *Regulation* and section 63(1) of the *Code*.

The Commission also found that Slocan failed to appropriately deactivate the road in accordance with the Deactivation Plan approved by the Ministry of Forests. The Commission therefore upheld the decision that Slocan had contravened section 20(c) of the *Regulation* and section 64(1) of the *Code*. The Commission found that these four contraventions led to two distinct and independent legal prohibitions, and that the Review Panel did not err in finding multiple contraventions. The Commission also found that Slocan was not entitled to a defence of due diligence.

The Commission considered the factors for assessing penalties set out in section 117 of the *Code* and found the quantum of the penalty to be excessive. It found that the magnitude and gravity of the contraventions were not as severe as described in the determination of the District Manager, that the contraventions were not deliberate, that there had been no economic benefit to Slocan, and that Slocan cooperated in efforts to correct the problem. The Commission concluded that an appropriate penalty was \$4,000 for Slocan's failure to inspect and maintain the road and \$2,000 for Slocan's failure to properly deactivate the road in accordance with the Deactivation Plan. The appeal was allowed, in part.

One member of the Panel disagreed with the majority opinion in this appeal. The dissenting

Panel member would have upheld the \$14,000 penalty levied by the District Manager.

98-FOR-05 Robert E. Stevens and Linda A.

Krofta v. Government of British Columbia

Decision Date: March 15, 1999

Panel: Barbara Fisher, Kristen Eirikson,
Howard Saunders

This was an appeal by Mr. Stevens and Ms. Krofta against a review decision upholding a decision of the District Manager to impose a compensatory penalty of \$12,169 against them for the unauthorized harvesting of an estimated 117.7 cubic metres of Crown timber. They did not dispute that the unauthorized harvesting had occurred, but argued that the compensatory penalty was excessive because the District Manager's estimate of the value of the timber was too high. They also argued that the deterrent penalties, totalling \$6,000, which were assessed by the District Manager and referred back to him by the Review Panel for reconsideration, were not warranted in the circumstances.

The District Manager had based his calculation for the compensatory penalty on the average stumpage rate plus bonus bid for the District at the time of the unauthorized harvesting. Due to the nature and the location of the timber, the Commission found that the District Manager's assessment of the timber value was high.

The Commission considered the factors listed in section 117(4) of the Code, including the facts that the violation was not deliberate nor a repeat violation, and that the Appellants had received some economic benefit from the contravention. The Commission found that the compensatory penalty should have been based on the amount that the Crown would have received if the timber had been sold by competitive bid. Accordingly, the Commission reduced the compensatory penalty to \$8,710.

The Commission also found that no deterrent penalty should have been levied in this case because, among other reasons, the timber in question was not part of a commercial stand, Mr. Stevens had no experience in logging, and he had made reasonable efforts to determine his property boundary. The appeal was allowed.

98-FOR-06/98-FAB-04 Alan R. Luoma v.

Government of British Columbia (Forest Practices Board, Third Party)

Decision Date: March 12, 1999

Panel: Toby Vigod, Bruce Devitt, Katherine Lewis

This was an appeal by Mr. Luoma against two review decisions upholding a decision of the District Manager to assess penalties of \$14,369 under section 96(1) of the Code, \$29,421 under section 138(1) of the *Forest Act* and \$2,500 under section 97(2) the Code. The penalties were assessed after the District Manager found that Mr. Luoma had harvested Crown timber on land next to his property without authorization, and failed to ascertain the boundaries of private land adjoining Crown land.

Mr. Luoma sought an order setting aside the District Manager's determination and the two review decisions. He argued that it was not proven, on a balance of probabilities, that he was responsible for the unauthorized harvesting of timber on the Crown land adjacent to his property. If he was found responsible, he argued that there was no evidence that any unauthorized harvesting occurred after the date of proclamation of the Code, and thus any penalties should be assessed under the *Forest Act*.

The Commission found that the circumstantial evidence produced by the Respondent was very strong and that an adverse inference could be made against Mr. Luoma for his failure to testify at the hearing. The Commission concluded that, on a balance of probabilities, Mr. Luoma was responsible

for the unauthorized harvesting of the timber. Based on information not available to the District Manager when he made his decision, the Commission found that 286.4 cubic metres of timber had been harvested before the proclamation of the Code, and 232 cubic metres of timber had been harvested after the proclamation of the Code. Using the methodology and penalty rates employed by the District Manager, the Commission re-calculated the penalties and found that \$34,908 should be assessed for the contravention under the Code and \$19,925 for the violation of the Forest Act.

The Commission also found that Mr. Luoma knew where the boundaries of his land were, and thus found that the contravention of section 97(2) of the Code should be rescinded. The Commission further found that, as the appeal was a hearing *de novo*, it did not need to address the issue of whether one of the Review Panels had erred in referring the Forest Act determination back to the District Manager for reconsideration after he had already found that the Forest Act had been contravened. Finally, the Commission found that any error made by the Review Panel in directing the District Manager to investigate the use of the timber mark involved was also cured by the hearing *de novo*.

The Commission upheld the finding that Mr. Luoma had contravened section 96(1) of the Code and section 138(1) of the Forest Act, varied the penalties imposed, and rescinded the finding of a contravention of section 97(2) of the Code and the penalty assessed under that section.

98-FOR-07 Riverside Forest Products Ltd. v. Government of British Columbia (Forest Practices Board, Third Party)

Decision Date: May 31, 1999

Panel: David Ormerod, Bruce Devitt, Geza Toth

This was an appeal by Riverside Forest Products Ltd. against a review decision upholding a

determination of the District Manager that Riverside caused a landslide which damaged the environment, contrary to section 45(1) of Code, and that Riverside failed to install or maintain adequate road drainage structures as required by the Forest Road Regulation. Riverside sought an order rescinding the Review Panel's decision.

Riverside submitted that it did not contravene the Regulation by failing to install a ditch block at the culvert, as the requirements in the Regulation applied only to cross drain culverts and the culvert at issue was a stream culvert. Riverside also argued that the Regulation only applied to forest roads until their deactivation, temporarily or otherwise. As the road in question was temporarily deactivated, Riverside argued that it was under no obligation to ensure the functionality of the road's drainage systems.

The Commission found that the culvert was clearly intended to carry a watercourse under the road. Therefore, it was a stream culvert and the Regulation was applied in error. However, the Commission also found that the Regulation required Riverside to ensure that the drainage systems of the road were functional and that by failing to do so, Riverside contravened the Regulation.

Riverside also contended that the landslide was caused by severe winter weather, not Riverside. It also argued that it was not carrying out a forest practice that could have led to the damage at the time of the slide, and that, even if its forest practices were causal factors in the landslide, section 45(1) was not applicable because section 45(2) of the Code states that a person who harms the environment while acting in accordance with a valid operational plan or permit, does not contravene section 45(1).

The Commission found that, on a balance of probabilities, the slide was caused by inadequate measures to maintain natural drainage in the after-

math of Riverside's logging activity. The Commission found that Riverside was carrying out forest practices at the time of the slide, and, therefore, did contravene section 45(1). The Commission further found that Riverside was not acting in full compliance with its approved plans and permits, and, therefore, the section 45(2) defence was not relevant.

The Commission found that Riverside had ongoing responsibilities to prevent damage to the environment by meeting the requirements of the operational plans and permits, and held that Riverside damaged the environment in contravention of section 45(1) of the *Code*, and contravened the *Regulation* by failing to ensure the functionality of the logging road's drainage system. The appeal was allowed, in part.

98-FOR-09 Canadian Forest Products Ltd. v.

Government of British Columbia

Decision Date: May 5, 1999

Panel: Toby Vigod

This was an appeal by Canadian Forest Products Ltd. ("Canfor") against a review decision upholding a determination of the District Manager that Canfor had contravened section 67(2)(a) of the *Code* and sections 10(6)(a) and (b) and 11(1)(k) of the *Forest Road Regulation*. The review decision also upheld the \$1,000 penalty that had been assessed by the Manager for the contraventions.

Canfor appealed the review decision on the ground that the Review Panel erred in finding the contravention of section 67(2) of the *Code* to be a separate contravention from those found under the *Regulation*. Canfor contended that the contravention of section 67(2)(a) duplicated the contraventions found in the *Regulation*, and sought an order from the Commission rescinding the *Code* contravention, and leaving in place the underlying contraventions of the *Regulation* to avoid the alleged duplication.

The Commission found that a plain reading of section 67(2)(a) of the *Code* indicates that where a contravention of the *Regulation* has been established in relation to a forest practice in and around a stream, there has also been a contravention of section 67(2)(a) of the *Code*. The Commission found that the questions before it were, therefore, whether this duplication was barred by law, and whether the contravention of the more general section should be rescinded.

The Commission had held in previous decisions that the common law rule against multiple convictions for the same wrongful act is not applicable to contraventions assessed under the *Code* and its regulations. However, it also found that even though a finding of multiple contraventions for the same circumstances may be acceptable, unfairness may result from the manner in which penalties are levied and reported.

The Commission found that the contravention of the *Regulation* automatically resulted in a contravention of the *Code*. The Commission found no reason to depart from its previous findings, and, in this case, the result was not unfair provided that the penalty was properly assessed. The Commission found that the penalty was properly assessed. The appeal was dismissed.

98-FOR-10 Rudolph and Celia Harfman v.

Government of British Columbia

Decision Date: July 20, 1999

Panel: Gerry Burch, Brenda Milbrath,

David Ormerod

This was an appeal by Rudolph and Celia Harfman against a review decision upholding a determination of the District Manager that they breached sections 74(1) and 98 of the *Code* by failing to graze livestock in accordance with the *Code*, and by allowing livestock to graze on Crown range without authority. The Harfmans requested that the

review decision be wholly rescinded on the basis that the determination was made in bad faith, and demonstrated bias.

The Commission found that there was no substance to the Harfmans' charges that Ministry of Forests officials acted in bad faith, were biased against them, or in any other way were acting in a manner inconsistent with the professional discharge of their duties. The Commission found that the Harfmans failed to maintain range infrastructure or to adhere to the rotational grazing of their grazing licence, and that they were continuously in violation of their grazing licence. The Commission further found that the Harfmans displayed disregard for the privileges accorded them under the grazing licence, jeopardized the health and productivity of Crown range, caused inconvenience and expense for other range users and neighbours, and caused an excessive workload for Ministry of Forests officials administering the Crown range.

The Commission found that the Review Panel erred in not upholding the contraventions of sections 74(1) and 98 prior to May 1, 1998, as it was clear that the grandparenting provisions of the Code applied to Schedule B of their grazing licence.

The Commission found that a penalty was called for to deter the Harfmans from continuing this pattern of illegal and harmful use of Crown range. The Commission confirmed the original penalty of \$4,000 for contraventions of section 74(1) and section 98 of the Code. The appeal was dismissed and the District Manager's quantum of penalty was reinstated.

99-FOR-04 Forest Practices Board v. The Pas Lumber Co. Ltd. and Government of British Columbia

Decision Date: December 15, 1999

Panel: Toby Vigod

This was an appeal by the Forest Practices

Board against a review decision which varied two determinations made by the District Manager. In both cases, the review decision upheld the Manager's original finding that The Pas Lumber Company Ltd. had contravened sections 67(1)(e), (f) and (2)(d) of the Code. However, the Reviewer reduced the original contravention penalties set by the Manager to zero.

On December 1, 1999, prior to the matter being scheduled to be heard, the parties made a joint submission to the Commission requesting that the Manager's original penalties be re-instituted. Accordingly, the Commission ordered, by consent of the parties, that the review decision be varied to assess penalties of \$6,575.65 and \$6,299.48 for the two contraventions. The appeal was allowed.

Forest Appeal Board

98-FAB-04/98-FOR-06 Alan R. Luoma v. The Province of British Columbia (Ministry of Forests)

Decision Date: March 12, 1999

Panel: Toby Vigod, Bruce Devitt, Katherine Lewis

See page 23 for a brief summary of the appeal.

98-FAB-06 Woodland Lumber Ltd v. The Province of British Columbia (Ministry of Forests)

Decision Date: July 16, 1999

Panel: Howard Saunders

This was an appeal by Woodland Lumber Ltd. against a review decision by an acting Regional Manager regarding a Stumpage Adjustment Notice issued by the District Manager. The acting Regional Manager directed the District Manager and Timber Pricing Coordinator to review the appraisal data, amend inaccuracies and conduct a reappraisal of the stumpage rate in the Notice.

Woodland appealed the review decision on the grounds that the acting Regional Manager did not properly exercise his discretion under sections 2.1(4) and 3.1(2) of the Interior Appraisal Manual ("IAM"). It also submitted that the decision did not address the fact that the Mean Value Index was too low and that the Target Rate was too high or, in the alternative, that the Target Rate did not apply to Small Business Sales.

The Board found that section 2.1(4) of the IAM provides the Regional Manager with the authority and flexibility to reappraise stumpage rates in case of an emergency or in unusual situations not covered in the manual. The Board concluded that none of the events in this appeal were so unusual or urgent that the use of the discretion permitted under section 2.1(4) was warranted. The Board also concluded that the acting Regional Manager exceeded his authority in directing a reappraisal prior to the anniversary date. In these circumstances, only the Minister had the power to order a reappraisal prior to the anniversary date.

Regarding section 3.1(2), Woodland noted that its mill only processed small logs, and argued that the provision in its licence stating that it would process pine trees into small boards represented a *de facto* restriction on the licence. Therefore, Woodland argued that the acting Regional Manager should have exercised his discretion under section 3.1(2) of the IAM to use the reduced "Small Log AMVs" in the appraisal. The Board found that where the actual tree volume is over 2.5 times the 0.2 cubic metre limit, and there is an absence of any average tree volume restrictions in the licence, this was not a "similarly restricted" licence under section 3.1(2) of the IAM, where the Regional Manager may exercise his discretion.

Woodland argued that the Mean Value Index was too low as a result of excluding Small Business Sales from its calculation. The Board found

that the acting Regional Manager's decision properly did not address Woodland's allegation that the Mean Value Index was too low, in that the Regional Manager has no authority to deal with the issue. The Board noted that the determination of the Mean Value Index was clearly stated in the IAM and is not within the purview of the Regional Manager to amend.

Woodland argued that the Target Rate used in Small Business Sales was too high because it included the Forest Renewal Surcharge. The Board found that this argument appeared to refer to the funding arrangement for Forest Renewal B.C., which was not an appraisal issue. The Board found that this was a high-level policy issue and is not within the jurisdiction of the Regional Manager to amend.

The Board rescinded the determination of the acting Regional Manager with respect to his direction to conduct a reappraisal, and dismissed the other issues raised by the Appellant. The appeal was dismissed.

98-FAB-09 Denis Hurtubise v. The Province of British Columbia (Ministry of Forests)

Decision Date: June 28, 1999

Panel: Kristen Eirikson

This was an appeal by Denis Hurtubise against a review decision upholding a determination of the District Manager to cancel Mr. Hurtubise's cutting licence and road use permit for failure to comply with conditions of the licence. Mr. Hurtubise had been issued a licence to cut timber from the bed of portions of Stave Lake. A number of other persons held licences to cut in the same area. The cancellation of Mr. Hurtubise's licence was a result of incidents involving other licence holders with respect to marking and alleged theft of timber.

Mr. Hurtubise contended that there was insufficient evidence to justify the cancellation of his licence. The Board held that cancellation of a

licence requires actual, not perceived interference with others rights, and that there was insufficient compelling evidence to establish that, on a balance of probabilities, Mr. Hurtubise interfered with the rights of other licence holders on the lake. This finding was supported by what the Board found to be a vague licensing and statutory scheme governing this situation, and by the nature of the logging processes and informal timber marking system used on the lake. The Board noted that, given the circumstances, it was extremely difficult to determine what would constitute an interference with rights.

Mr. Hurtubise contended that, as hearings before the Board are *de novo* in nature, the review decision could not form part of the record or be considered by the Board. The Board found that determinations and review decisions form part of the record, as section 147 of the *Forest Act* requires that "the determination, order, or decision appealed from" must be submitted when filing a notice of appeal.

The Board concluded that determinations and review decisions may be considered by the Board. However, it held that they do not form part of the evidence or constitute findings of fact that must be given any particular weight, or even considered by the Board.

The Board rescinded the determination of the Manager, as upheld by the Review Panel, and rescinded the cancellation of the Appellant's licence to cut and his related road use permit. The appeal was allowed.

99-FAB-02 Laurie Parker and Family Cattle Co. Ltd. v. The Province of British Columbia (Ministry of Forests)

Decision Date: August 18, 1999

Panel: David Ormerod

This was an appeal by Laurie Parker and the Family Cattle Company Ltd. against a review decision upholding a determination of the District

Manager that the Appellants had contravened section 138 of the *Forest Act*, which prohibits the cutting of Crown timber without authorization. The review decision also upheld the District Manager's decision to assess stumpage, a penalty, and surveying costs for the contravention.

The Appellants accepted that trespass had occurred, but denied that they were responsible. They submitted that they had sold the standing timber on three properties they owned to a representative of a local logging company. These properties were adjacent to the area of Crown land at issue. They submitted further that they had shown the "compassed boundaries" of these parcels to a representative of the logging company who was responsible for ensuring that the logging operation did not cross these boundaries. The Appellants submitted that they knew nothing about the subsequent logging operation that resulted in the trespass.

The Board found that the Appellants and the logging company representative had a high degree of familiarity with the boundary locations and that, therefore, it was not possible for the logging company representative to have mistakenly logged to a different boundary from that shown to him by the Appellants. The Board further found that there was a serious error in locating the boundary in question and that the mis-location of the boundary was deliberate. The Board also found that the Ministry of Forests erred in issuing a timber mark to the logging company for the three properties, as none were owned by the company. The Board ordered the Appellants to pay stumpage, a revised trespass penalty, and the survey costs. The appeal was dismissed.

**98-FAB-05 Guy Montgomery Jr. and Eagle Crest
Properties Ltd. v. The Province of British
Columbia (Ministry of Forests)**

Decision Date: October 27, 1999

Panel: Howard Saunders

This was an appeal by Guy Montgomery Jr. and Eagle Crest Properties Ltd. against a review decision upholding a determination by the District Manager that the Appellants had engaged in unauthorized harvesting of Crown timber contrary to section 138(1) of the *Forest Act*. The District Manager had assessed a combination of stumpage due and a penalty under section 139 of the *Act* for the contravention.

The Board found that the Review Panel erred in concluding that there was negligence and a failure to locate boundaries on the part of Mr. Montgomery, and that this was a factor in the trespass by the logging contractor. The Board found, on the balance of probabilities, that the contractor knew the correct boundaries, altered the map he had been provided, and intentionally trespassed onto Crown land. Although the Board upheld the finding that Mr. Montgomery or Eagle Crest benefited from the unauthorized harvest, it found that the evidence did not support the determination that Mr. Montgomery or Eagle Crest knew about the trespass but did not disclose it.

The Board found that, in the circumstances, it was appropriate that no penalty be assessed against Eagle Crest or Mr. Montgomery. However, the Board also found that the Crown was entitled to full compensation for its timber, and that a stumpage and surveying assessment should be applied. The Board decided that the stumpage assessment should be made against Eagle Crest. The appeal was allowed, in part.

Appeals of Decisions

January 1, 1999 – December 31, 1999

Forest Appeals Commission

Thomas Paul v. Forest Appeals Commission, the Attorney of British Columbia, and the Ministry of Forests

Decision Date: September 23, 1999

Court: B.C.S.C., Mr. Justice Pitfield

Thomas Paul, an aboriginal Canadian, applied to the court for an order prohibiting the Forest Appeals Commission from hearing an appeal under the Code concerning the question of whether he removed four cedar trees from Crown land in contravention of the Code. Mr. Paul argued that the Commission does not have jurisdiction to consider aboriginal rights and treaty rights in the context of appeals against decisions made under the Code.

Based on an analysis of the Supreme Court of Canada jurisprudence, the Court found that the Commission only has authority to consider constitutional issues in relation to an alleged contravention of the Code if it has been empowered, by its enabling legislation, to address general questions of law. The court found that the Code contains no express provision. However, it held that the power of the Commission to consider and adjudicate in respect of aboriginal rights in the context of section 96 of the Code can, and should, be inferred from the legislation. The Court noted that the requirement to convene a hearing and the obligations to permit

representation by counsel, hear witnesses, receive evidence, receive submissions with respect to fact, law and jurisdiction, and provide a decision promptly but not summarily, combined with the right to appeal to the Supreme Court in respect of questions of law and jurisdiction, is "more than sufficient to compel the conclusion that the Commission has the jurisdiction to adjudicate with respect to the aboriginal right."

The Court also cited practical reasons supporting its conclusion. It noted that the Preamble to the Code states that "sustainable use" of forest resources is the guiding principle of the legislation, and that "sustainable use" is described in the Preamble as including a balancing of various values to meet the economic, social and cultural needs of peoples and communities, including First Nations. It found that the ability to manage the forest resource in a manner consistent with the rights of all parties could be thwarted if the mere assertion of a constitutional right were sufficient to force the bifurcation of an appeal before the Commission into one or more separate proceedings. The Court found that there was no compelling reason why that should be the case, insofar as the adjudication of alleged contraventions of the Code are concerned, where a thorough and refined adjudicative process has been provided by the legislature and decisions are subject to appeal. The application for an order of prohibition was dismissed.

Both Mr. Paul and the Province have been granted leave to appeal to the British Columbia Court of Appeal.

Forest Appeal Board

MacMillan Bloedel Limited, Canadian Forest Products Ltd., Western Forest Products Limited, Mission Tree Farm and Richmond Plywood Corporation Limited v. The Ministry of Forests and the Appeal Board appointed under section 148 of the Forest Act, R.S.B.C. 1996, c.157

Decision Date: March 29, 1999

Court: B.C.S.C., Mr. Justice Vickers

The companies appealed a decision of the Forest Appeal Board affirming the method of correcting a mathematical error in the calculation of stumpage rates used by the Ministry of Forests' Revenue Branch. The Director of the Revenue Branch had corrected the error and recalculated the stumpage rates. The companies appealed to the Court on the grounds that the Coast Appraisal Manual ("CAM") required a full stumpage reappraisal by the Regional Manager, not simply a correction of the error. The companies argued that the Board erred in (1) its interpretation of section 2.3.4(e)(iii) of the CAM; and (2) in its interpretation of the notice requirement in section 2.3.4 of the CAM.

The Court found that the first issue involved a question of law and that a "standard approaching correctness" was to be applied to the Board's decision. It found that while the language of the CAM clearly stated that a full reappraisal was required, a strict interpretation of this requirement would lead to an absurd result. Thus, it found that the Board did not err in its interpretation of section 2.3.4(e)(iii) of the CAM.

On the second issue, the Court found that as the question of sufficiency of notice involves issues of both fact and law, the standard of review was one of reasonableness. The Court found that there was evidence that would allow the Board to reach the decision it did and that the decision was not unreasonable. Therefore, the Board did not err. The appeal was dismissed.

This matter is now before the Court of Appeal.



Statistics

Forest Appeals Commission

The following tables provide information on the appeals filed with the Commission during the period from January 1, 1999 to December 31, 1999.

A total of eight appeals were filed with the Commission in 1999. By the end of 1999, no appeals had been rejected, one had been withdrawn and seven had been heard.

The Commission issued eight decisions in 1999, including one consent order.

Appeals filed	8
Appeals rejected	0
Appeals withdrawn	1
Total hearings held	7
Oral hearings	6
Written hearings	1
Decisions issued	7
Hearings pending from appeals filed in 1999	5
Decisions pending from appeals filed in 1999	1

◀ This table provides a summary of the appeals filed with this office and their status. Note that hearings held and decisions issued in 1999 do not necessarily reflect the number of appeals filed in 1999. Of the seven decisions issued in 1999, five were from appeals filed in 1998, one was from an appeal filed in 1999, and one was from an appeal filed in 1997.

Number of times sections of the Code and its Regulations were at issue in appeals filed during report period

Section of the Code	
45 Must not carry out forest practice that causes harm to the environment	1

Number of times sections of the Code and its regulations were at issue in appeals filed with the Commission during report period

Section of the Code	
27 Range use plans	1
64 Road deactivation	1
67 Timber harvesting	2
70 Silviculture prescriptions	1
74 Range developments and brands	1
96 Unauthorized timber harvest operations	1
98 Trespassing livestock	1
Section of the Forest Road Regulation (B.C. Reg. 106/98)	
13 Drainage construction	1
19 Timing windows and measures governing road deactivation	1
20 Road deactivation prescription	1



This table provides an overview of the determinations which were at issue in the appeals filed in 1999.

Parties to Forest Appeals Commission Appeals

Appellant	Number of times filed an appeal
Carrier Lumber Ltd.	1
Forest Practices Board	3
Rudolph and Celia Harfman	1
Gloria O'Brien	1
Sintich Enterprises	1
Slocan Forest Products Ltd	1

Third Party	Number of times given third party status in appeals filed
Gloria O'Brien	1
Takla Development Corporation Ltd.	1
The Pas Lumber Company Ltd.	1

Intervenor	Number of times given intervenor status in appeals filed
	0

▲ These tables show the number of times a particular party has been involved in an appeal over the report period. Appeals were filed by both individuals and forest companies.

During the report period, third party status was granted on three occasions and there were no applications for intervenor status.

Forest Appeal Board

The following table provides information on the appeals filed with the Board during the period from January 1, 1999 to December 31, 1999

A total of three appeals were filed with the Board in 1999. By the end of 1999, no appeals had been rejected, none had been withdrawn and five had been heard.

The Board issued five decisions in 1999.

Appeals filed	3
Appeals rejected	0
Appeals withdrawn	0
Total hearings held	5
Oral hearings	4
Written hearings	1
Decisions issued	5
Hearings pending from appeals filed in 1999	2

▲ This table provides a summary of the appeals filed with this office and their status. Note that hearings held and decisions issued in 1999 do not reflect the number of appeals filed in 1999. Of the five decisions issued in 1999, 4 were from appeals filed in 1998 and one was from an appeal filed in 1999.

APPENDIX I
Legislation and Regulations

The legislation contained in this report was up to date at the time of publication. Please be aware that subsequent to this publication, the legislation may have been amended. An updated version of the legislation may be obtained from Crown Publications.

Forest Practices Code of British Columbia Act

Part 6

COMPLIANCE AND ENFORCEMENT

Division 4 – Administrative Review and Appeals

Definitions

125.1 In this Division:

“review official” means

- (a) a person employed in any of the ministries who is designated by name or title to be a review official by the deputy minister of that ministry, or
- (b) for a review requested under section 128 (2), a person employed in the Ministry of Forests who is designated by name or title to be a review official by the deputy minister of the Ministry of Forests.

Determination not effective until proceedings concluded

- 126 (1) A determination that may be reviewed under section 127 does not become effective until the person who is the subject of the determination has no further right to have the determination reviewed or appealed.
- (2) Despite subsection (1), the chief forester may order that a determination, other than a determination to levy a penalty under section 117 (1), 118 (4) or (5) or 119, is not stayed or is stayed subject to conditions, on being satisfied that a stay would be contrary to the public interest.
- (3) Despite subsection (1), a determination is not stayed if the determination is made
- (a) under section 123 (1), or
 - (b) under prescribed sections or for prescribed purposes.

Person affected by a determination may have it reviewed

- 127 (1) A person who is the subject of a determination under section 82, 95 (2), 99 (2), 101 (2), 102 (3), 106 (1), 117 to 120 or 123 (1) may deliver, to the review official named in the notice of determination, a written request for a review of the determination.

- (2) The person must ensure that the request for review complies with the content requirements of the regulations.
- (3) The person must deliver the request for review to the review official not later than 3 weeks after the date the notice of determination was given to the person.
- (4) Before or after the time limit in subsection (3) expires, the review official may extend it.
- (5) A person who does not deliver the request for review within the time specified loses the right to a review.

Forest Practices Board may have determination or decision reviewed

- 128 (1) The board may request a review of
- (a) a determination made under section 82, 95 (2) or 117 to 120,
 - (b) a failure to make a determination under section 82, 95 (2) or 117 to 120, and
 - (c) if the regulations provide and in accordance with the regulations, a determination under Division 5 of Part 3 with respect to approval of a forest development plan, range use plan or amendment to either of those plans.
- (2) To obtain a review of a failure to make a determination, the board must deliver a request for review to the review official referred to in paragraph (b) of the definition of "review official" in section 125.1, and to the person who would be subject to the determination, not later than 6 months after the occurrence of the event that would have been the subject of the determination.

- (3) To obtain a review of a determination, the board must deliver a request for review to the review official specified in the notice of determination, and to the person who is the subject of the determination, not later than 3 weeks after the date the notice was given to the person who is the subject of the determination.

- (3.1) The board must ensure that the request for review complies with the content requirements of the regulations.
- (4) Before or after the time limit in subsection (3) expires, the regional manager may extend it.
- (5) If the board does not deliver the request for review within the time specified, the board loses the right to a review.

Review

- 129 (1) A review official who receives a request for review must ensure that the review is conducted by one or more persons who
- (a) are employed under the *Public Service Act*, and
 - (b) have not made the determination under review, or are not the persons who failed to make a determination, if the review is for that reason, or have not participated in an investigation on which the determination was based.
- (2) The reviewer may decide the matter, based on one or more of the following:
- (a) the request for review and the ministries' files;
 - (b) the request for review, the ministries' files and any other communication with persons the reviewer considers necessary to decide the matter, including communicating with the person or board requesting the review

- and with the person who made or failed to make the determination;
- (c) an oral hearing.
- 3) After a request for review is delivered under section 127 or 128,
- (a) the person who is the subject of the determination, or who would be the subject of a determination, if made,
- (b) the board, if, under section 128, the board requested a review, and
- (c) the government
- must disclose the facts and law on which the person, board and government will rely at the review, if required by the regulations and in accordance with the regulations.
- (4) If permitted by, and in accordance with, the regulations, the reviewer may refer to the commission a question of law raised in a review, if there is agreement to the referral by
- (a) the person who is the subject of the determination or would be the subject of a determination, if made,
- (b) the board, if, under section 128, the board requested the review, and
- (c) the government.
- (5) The reviewer may make a decision
- (a) confirming, varying or rescinding the determination under review,
- (b) referring a determination or failure to make a determination back to the person who made it or failed to make it with or without directions, or
- (c) making a determination, if the review concerns the failure to make a determination.
- (6) The reviewer must give a written decision to the person who is the subject of the determination or, for a review of a failure to make a determination, the person who would be the subject of a determination, if made, and the board within
- (a) the prescribed period after the request for review was received by the review official, or
- (b) another period agreed to by
- (i) the person who is the subject of the determination, or who would be the subject of a determination, if made,
- (ii) the board, if, under section 128, the board requested a review, and
- (iii) the government.
- (7) Despite subsection (6) (a), if the reviewer determines that the request for review does not comply with the content requirements of the regulations, or that there was a failure to disclose facts and law required under subsection (3), the prescribed period under subsection (6) (a) does not begin until a request for review is received that does comply with those requirements, or the facts and law are disclosed as required under subsection (3).

Determinations that may be appealed

- 130 (1) Subject to subsection (3), a person who is the subject of a determination referred to in
- (a) section 127, or
- (b) section 129 (5) (c)
- may appeal the determination to the commission.
- (2) Subject to subsection (3), the board may appeal to the commission
- (a) a determination referred to in section 128 (1) (a),
- (b) a failure to make a determination referred to in section 128 (1) (b),

- (c) if the regulations provide and in accordance with the regulations, a determination under Division 5 of Part 3 with respect to approval of a forest development plan, range use plan or amendments to either of those plans, and
 - (d) any determination for which a review decision has been given under section 129 (6).
- (3) No appeal may be made under subsection (1) or (2) unless the determination or failure to make a determination has first been reviewed under section 129.
 - (4) If a determination is varied by the reviewer, the appeal to the commission is from the determination as varied.
 - (5) If, as a result of a review of a failure to make a determination, the reviewer makes a determination, the appeal to the commission is from the determination made by the reviewer

Appeal

- 131 (1) To initiate an appeal under section 130, the person referred to in section 130 (1) or the board, no later than 3 weeks after receiving the review decision under section 129 (6), must deliver to the commission a notice of appeal and
- (a) in the case of a determination referred to in section 130 (1) (a) or 130 (2) (a), (c) or (d), enclose a copy of the determination, and
 - (b) in the case of the determination referred to in section 130 (1) (b) or (2) (b), enclose a copy of the reviewer's determination.
- (2) If the appeal is from a determination as varied under section 129, the person or

- board bringing the appeal must include a copy of the review decision with the notice of appeal given under subsection (1).
- (3) The person or board bringing the appeal must ensure the notice of appeal given under subsection (1) complies with the content requirements of the regulations.
 - (4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.
 - (5) If the person or the board does not deliver the notice of appeal within the time specified, the person or board loses the right to an appeal.
 - (6) On receipt of the notice of appeal, the commission must, in accordance with the regulations, give a copy of the notice of appeal to the ministers and
 - (a) to the board, if the notice was delivered
 - (i) by the person who is the subject of the determination, or
 - (ii) for an appeal of a failure to make a determination, by the person who would be the subject of a determination, if made,
 - (b) to the person who is the subject of the determination, if the notice was delivered by the board, or
 - (c) for an appeal of a failure to make a determination, to the person who would be the subject of a determination, if made, if the board delivered the notice.
 - (7) The government, the board, if it so requests, and the person who is the subject of the determination or would be the subject of a determination, if made, are parties to the appeal.
 - (8) At any stage of an appeal the commission

or a member of it may direct that a person who may be affected by the appeal be added as a party to the appeal.

- (9) After a notice of appeal is delivered under subsection (1), the parties must disclose the facts and law on which they will rely at the appeal, if required by the regulations and in accordance with the regulations.
- (10) The commission, after receiving a notice of appeal, must
 - (a) promptly give the parties to an appeal a hearing, or
 - (b) hold a hearing within the prescribed period, if any.
- (11) Despite subsection (10), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts or law under subsection (9) or (14), the commission need not hold a hearing within the prescribed period referred to in subsection (10), but must hold a hearing within the prescribed period after a notice of appeal that does comply with the content requirements of the regulations is delivered to the commission, or the facts and law are disclosed as required under subsection (9) or (14).
- (12) A party may
 - (a) be represented by counsel,
 - (b) present evidence, including but not limited to evidence that was not presented in the review under section 129,
 - (c) if there is an oral hearing, ask questions, and
 - (d) make submissions as to facts, law and jurisdiction.
- (13) The commission may invite or permit a

person to take part in a hearing as an intervenor.

- (14) An intervenor may take part in a hearing to the extent permitted by the commission and must disclose the facts and law on which the intervenor will rely at the appeal, if required by the regulations and in accordance with the regulations.
- (15) A person who gives oral evidence may be questioned by the commission or the parties to the appeal

Referral of questions of law

- 131.1 A hearing regarding a question of law referred under section 129 (4) must be conducted in accordance with the regulations.

Order for written submissions

- 132 (1) The commission or a member of it may order the parties to deliver written submissions.
- (2) If the party that initiated the appeal fails to deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.
- (3) The commission must ensure that every party to the appeal has the opportunity to review written submissions from the other parties and an opportunity to rebut the written submissions.

Interim orders

- 133 The commission or a member of it may make an interim order in an appeal.

Open hearings

- 134 Hearings of the commission must be open to the public.

Witnesses

- 135 The commission or a member of it has the same power as the Supreme Court has for

the trial of civil actions

- (a) to summon and enforce the attendance of witnesses,
- (b) to compel witnesses to give evidence on oath or in any other manner, and
- (c) to compel witnesses to produce records and things.

Contempt

- 136 The failure or refusal of a person
- (a) to attend,
 - (b) to take an oath,
 - (c) to answer questions, or
 - (d) to produce the records or things in his or her custody or possession,
- makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

- 137 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,
- (a) any oral testimony, or
 - (b) any record or other thing relevant to the subject matter of the appeal and may act on the evidence.
- (2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court by reason of a privilege under the law of evidence.
- (3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.
- (4) The commission may retain, call and hear an expert witness.

Powers of commission

- 138 (1) On an appeal of a determination or of the confirmation, variance or rescission of a determination, the commission may consider the findings of
- (a) the person who made the determination that is being appealed, or
 - (b) the reviewer.
- (2) On the appeal, the commission may
- (a) confirm, vary or rescind the determination appealed from, or
 - (b) refer the matter with or without directions back to the person
 - (i) who made the initial determination, or
 - (ii) in the case of a determination made under section 129 (5) (c), the reviewer who made the determination.
- (3) On considering a question of law referred to the commission under section 129 (4), the commission may decide the question of law and the decision is binding
- (a) on the reviewer for the purposes of the review in question, and
 - (b) on the commission for the purposes of an appeal concerning the determination or the failure to make a determination that was subject of the review in question.
- (4) The commission may order that a party or intervenor pay another party or intervenor any or all of the actual costs in respect of the appeal.
- (5) After filing in the court registry, an order under subsection (4) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order

against the person named in it, and all proceedings may be taken as if it were an order of the court.

Decision of commission

- 139 (1) The commission must make a decision promptly after the hearing, and must give copies of the decision to the ministers, the parties and any intervenors.
- (2) On the request of any of the ministers or a party, the commission must provide written reasons for the decision.
- (3) The commission must make a decision within the prescribed period, if any.

Order for compliance

- 140 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission or a party may apply to the Supreme Court for an order
- (a) directing the person to comply with the order or decision, and
- (b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to court

- 141 (1) The minister or a party to the appeal, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.
- (2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision or order of the commission be stayed in whole or in part.
- (3) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 9

FOREST APPEALS COMMISSION

Establishment of a Forest Appeals Commission

- 194 (1) The Forest Appeals Commission is continued.
- (1.1) The commission is to hear appeals under
- (a) Division 4 of Part 6, and
- (b) the Forest Act and Range Act and, in relation to appeals under those Acts, the commission has the powers given to it by those Acts.
- (2) The commission consists of a chair, one or more vice chairs and other members the Lieutenant Governor in Council may appoint.
- (3) Appointments under subsection (2) may be for a term of up to 3 years.
- (4) The Lieutenant Governor in Council may
- (a) appoint a person as a temporary member to deal with a matter before the commission, or for a specified period or during specified circumstances, and
- (b) designate a temporary member as chair.
- (5) A temporary member has all the powers and may perform all the duties of a member of the commission during the period, under the circumstances or for the purpose of the appointment.
- (6) The Lieutenant Governor in Council may determine the remuneration, reimbursement of expenses and other conditions of employment of the members of the commission.

Organization of the commission

- 195 (1) The chair may organize the commission into panels, each comprised of one or more members.

- (2) The members of the commission may sit
 - (a) as a commission, or
 - (b) as a panel of the commission
 and 2 or more panels may sit at the same time.
- (3) If members of the commission sit as a panel,
 - (a) the panel has the jurisdiction of, and may exercise and perform the powers and duties of, the commission, and
 - (b) an order, decision or action of the panel is an order, decision or action of the commission.

Application of other sections

196 Sections 191 and 193 apply to the commission.

Mandate of the commission

- 197** (1) In accordance with the regulations, the commission must
- (a) hear appeals under Division 4 of Part 6 and under the *Forest Act* and the *Range Act*,
 - (b) provide
 - (i) the ministers with an annual evaluation of the manner in which reviews and appeals under this Act and the regulations are functioning and identify problems that may have arisen under their provisions, and
 - (ii) the Minister of Forests with an annual evaluation of the manner in which reviews and appeals under the *Forest Act* and the *Range Act* and the regulations relating to those reviews and appeals are functioning and identify problems that may have arisen under their provisions, and

- (c) annually, and at other times it considers appropriate, make recommendations
 - (i) to the ministers concerning the need for amendments to this Act and the regulations respecting reviews and appeals,
 - (ii) to the Minister of Forests concerning the need for amendments to the *Forest Act* and the *Range Act* and related regulations respecting reviews and appeals under those Acts, and
 - (d) perform other functions required by the regulations.
- (2) The chair must give to the ministers an annual report concerning the commission's activities.
- (3) The ministers must promptly lay the report before the Legislative Assembly.

Forest Act

Part 12

REVIEWS, APPEALS, REGULATIONS, PENALTIES

Division 2 – Appeals

Determinations that may be appealed

- 146** (1) Subject to subsection (3), an appeal may be made to the Forest Appeals Commission from a determination, order or decision of
- (a) a district manager or regional manager, under the provisions referred to in section 143 (1) (a) and (b),
 - (b) an employee of the ministry, under section 105 (1),
 - (c) the chief forester, under section 60 (2), 68, 70 (1), 77 (1) (a) or 112 (1), and
 - (d) the chief forester, by way of a

determination under section 66 (4) (b) or (5) (b), of the area of Crown land described in that section.

- (2) No appeal may be made under subsection (1) (a) and (b) unless the determination, order or decision has first been reviewed under Division (1) of this Part.
- (3) If a determination, order or decision referred to in subsection (1) (a) is varied by the person conducting a review under section 145, the appeal to the commission is from the determination, order or decision as varied under that section.
- (4) If this Act gives a right of appeal, this Division applies to the appeal.

Notice of appeal

- 147 (1) If under the provisions referred to in section 146 a determination, order or decision is made, the person
- (a) in respect of whom it is made, or
 - (b) in respect of whose agreement it is made
- may appeal the determination, order or decision by
- (c) serving a notice of appeal on the commission
 - (i) in the case of a determination, order or decision that has been reviewed, not later than 3 weeks after the date the written decision is served on the person under section 145 (3), and
 - (ii) in the case of a determination, order or decision that has not been reviewed, not later than 3 weeks after the date the determination, order or decision is served on the person under the provisions referred to in section

146 (1) (c) and (d), and

(d) enclosing a copy of the determination, order or decision appealed from.

- (2) If the appeal is from a determination, order or decision as varied under section 145, the appellant must include a copy of the review decision with the notice of appeal served under subsection (1).
- (3) The appellant must ensure that the notice of appeal served under subsection (1) complies with the content requirements of the regulations.
- (3.1) After the notice of appeal is served under subsection (1), the appellant and the government must disclose the facts and law on which the appellant or government will rely at the appeal if required by the regulations and in accordance with the regulations.
- (4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.
- (5) A person who does not serve the notice of appeal within the time required under subsection (1) or (4) loses the right to an appeal.

Appeal

- 148 (1) The commission, after receiving the notice of appeal, must
- (a) promptly hold a hearing, or
 - (b) hold a hearing within the prescribed period, if any.
- (2) Despite subsection (1), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts and law required under section 147 (3.1), the commission need not hold a hearing within the

prescribed period referred to in subsection (1) of this section, but must hold a hearing within the prescribed period after service of a notice of appeal that does comply with the content requirements of the regulations, or the facts and law are disclosed as required under section 147 (3.1).

- (3) Only the appellant and the government are parties to the appeal.
- (4) The parties may
 - (a) be represented by counsel,
 - (b) present evidence, including but not limited to evidence that was not presented in the review under Division 1 of this Part,
 - (c) if there is an oral hearing, ask questions, and
 - (d) make submissions as to facts, law and jurisdiction.
- (5) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Order for written submissions

- 148.1** (1) The commission or a member of it may order the parties to an appeal to deliver written submissions.
- (2) If the appellant does not deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.
 - (3) The commission must ensure that each party to the appeal has the opportunity to review written submissions from the other party and an opportunity to rebut the written submissions.

Interim orders

- 148.2** The commission or a member of it may make an interim order in an appeal.

Open hearings

- 148.3** Hearings of the commission are open to the public.

Witnesses

- 148.4** The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions
- (a) to summon and enforce the attendance of witnesses,
 - (b) to compel witnesses to give evidence on oath or in any other manner, and
 - (c) to compel witnesses to produce records and things.

Contempt

- 148.5** The failure or refusal of a person
- (a) to attend,
 - (b) to take an oath,
 - (c) to answer questions, or
 - (d) to produce the records or things in his or her custody or possession,
- makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

- 148.6** (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,
- (a) any oral testimony, or
 - (b) any record or other thing
- (2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court because of a privilege under the law of evidence.

Powers of commission

- 149 (1) On an appeal, whether or not the person who conducted the review confirmed, varied or rescinded the determination, order or decision being appealed, the commission may consider the findings of
- (a) the person who made the initial determination, order or decision, and
 - (b) the person who conducted the review.
- (2) On an appeal, the commission may
- (a) confirm, vary or rescind the determination, order or decision, or
 - (b) refer the matter back to the person who made the initial determination, order or decision with or without directions.
- (3) If the commission decides an appeal of a determination made under section 105, the commission must, in deciding the appeal, apply the policies and procedures approved by the minister under section 105 that were in effect at the time of the initial determination.
- (4) The commission may order that a party pay any or all of the actual costs in respect of the appeal.
- (5) After filing the court registry, an order under subsection (4) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.
- (6) Unless the minister orders otherwise, an appeal under this Division does not operate as a stay or suspend the operation of the determination, order or decision under appeal.

Decision of commission

- 149.1 (1) The commission must make a decision promptly after the hearing and serve copies of the decision on the appellant and the minister.
- (2) On request of the appellant or the minister, the commission must provide written reasons for the decision.
 - (3) The commission must serve a decision within the prescribed period, if any.

Order for compliance

- 149.2 (1) If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission, minister or appellant may apply to the Supreme Court for an order
- (a) directing the person to comply with the order or decision, and
 - (b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to the courts

- 150 (1) The appellant or the minister, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.
- (2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision of the commission be stayed in whole or in part.
 - (3) An appeal from the decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Range Act

Review and appeal

- 41 (1) A review may be required of a determination, order or decision of
- (a) a forest officer under section 34, and under a licence or permit, and
 - (b) a district manager under sections 31, 32, 34, and 35, and under a licence or permit.
- (2) A review of the determination, order and decision referred to in subsection (1) (a) and (b) is to be conducted by the regional manager.
- (3) If a review is to be conducted by the regional manager under subsection (2), the regional manager may delegate the power to decide the review to an official in the Ministry of Forests.
- (4) Subject to subsection (5), an appeal may be made to the Forest Appeals Commission from a determination, order or decision of a forest officer or district manager under the provisions referred to in subsection (1) but only if the determination, order or decision has first been reviewed.
- (5) If a determination, order or decision referred to in subsection (1) is varied by the person conducting a review, the appeal to the Forest Appeals Commission is from the determination, order or decision as varied.
- (6) The procedures and powers in respect of reviews and appeals under the Forest Act apply to reviews and appeals under this section.

Appeal from section 26 decision

- 42 (1) Section 41 does not apply to an appeal from a decision of a district manager made under section 26.
- (2) The holder of a licence or permit affected by a decision to change boundaries under section 26 may appeal the change to the minister by serving, within 21 days after service of the notice referred to in section 26 (2), written notice of the appeal on the district manager who made the decision.
- (3) The notice of appeal must include the name and address of the appellant, the reasons in support of the appeal and a copy of the notice of the change being appealed.
- (4) The minister, or a person designated in writing by the minister, must promptly
- (a) hear the appeal,
 - (b) confirm, reverse or vary the decision of the district manager, and
 - (c) provide the appellant with a written decision by delivering a copy to the appellant, or by mailing a copy to the appellant by registered mail to the address of the appellant in the notice of appeal.

Appeal not a stay

- 43 Unless the minister order otherwise, a review or an appeal taken under this Act does not operate as a stay or suspend the operation of the determination, order or decision being reviewed or appealed.

Administrative Review and Appeal Procedure (Forest Practices) Regulation

Part 1

DEFINITIONS

Definitions

1 (1) In this regulation:

"**appellant**" means

- (a) for a *Forest Act* appeal, the person that initiates an appeal under section 147 (1) of the Act,
- (b) for a *Range Act* appeal, the person that initiates an appeal under section 41 (4) of the Act, or
- (c) for a *Forest Practices Code of British Columbia Act* appeal, the person that initiates an appeal under section 131 (1) of that Act, and includes the board if the board initiates an appeal under section 131 (1) of that Act;

"**determination**" means

- (a) a determination, order or decision referred to in section 143 (1) or 146 of the *Forest Act*,
- (b) a determination, order or decision referred to in section 41 (1) of the *Range Act*, or
- (c) a determination referred to in section 127 (1), 128 (1) or 129 (5) (c) of the *Forest Practices Code of British Columbia Act*;

"**requesting person**" means a person that

requests a review of a determination under the *Forest Act*, *Range Act* or *Forest Practices Code of British Columbia Act*, and includes the board if the board requests a review of a determination or of a failure to make a determination under the *Forest Practices Code of British Columbia Act*;

"**reviewer**" means

- (a) for a review under the *Forest Act*,
 - (i) the regional manager if the review concerns a determination referred to in section 143 (1) (a) or (c) of the *Forest Act*,
 - (ii) the chief forester if the review concerns a determination referred to in section 143 (1) (b) of the *Forest Act*, or
 - (iii) the person to whom, under section 143 (3) of the *Forest Act*, the regional manager or chief forester delegates the power to decide the review,
- (b) for a review under the *Range Act*,
 - (i) the regional manager if the review concerns a determination referred to in section 41 (1) (a) or (b) of the *Range Act*, or
 - (ii) the person to whom, under section 41 (3) of the *Range Act*, the regional manager delegates

the power to decide the review, or
(c) for a review under the *Forest Practices Code of British Columbia Act*,
"reviewer" as defined in section 1 (1)
of that Act.

(2) In Division 4 of Part 6 of the *Forest Practices Code of British Columbia Act*,
"ministries" means the Ministry of Forests,
the Ministry of Environment, Lands and
Parks and the Ministry of Energy and Mines.

Part 2

ADMINISTRATIVE REVIEW PROCEDURE

Division 1 – Requesting a Review

Board may request review of plan approvals

2 The board may request a review of a determination with respect to approval of a forest development plan, range use plan or amendment to either of those plans, if the board believes that in relation to the preparation of the plan or amendment, there has been a contravention of the *Forest Practices Code of British Columbia Act* or the regulations made under that Act.

Request for review

3 (1) A request for review of a determination or a failure to make a determination must be signed by, or on behalf of, the requesting person and must contain all of the following information:

- (a) the name and address of the requesting person, and the name of the person, if any, making the request on that person's behalf;
- (b) the address for service of the requesting person;
- (c) the grounds for review;
- (d) a statement describing the relief requested.

(2) In addition to the requirements of subsection (1), a request for review delivered to a reviewer by the board must also include

- (a) for the review of a determination or of a failure to make a determination, the name of the person whose determination or failure to make a determination is the subject of the request, and
- (b) with respect to approval of a forest development plan, range use plan or amendment to either of those plans, the name of the agreement holder responsible for preparing the plan or amendment that is the subject of the request for review.

Division 2 – Procedures after Receipt of Request for Review under the *Forest Act* and *Range Act*

Reviews conducted under the *Forest Act* and *Range Act*

4 Sections 5 to 8 apply to requests for reviews under the *Forest Act* and *Range Act*.

Notification of parties following receipt of request for review

5 The reviewer must acknowledge in writing any request for review.

Deficient request for review

6 (1) If a request for review does not comply with section 3, the reviewer may serve a written notice of deficiencies to the requesting person, inviting the requesting person, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) If the reviewer serves a notice of

deficiencies under subsection (1), the requested review may proceed only after the earlier of

- (a) the expiry of the period specified in the notice of deficiencies, or
 - (b) the submission to the reviewer of further material remedying the deficiencies.
- (3) The reviewer must serve a copy of the request and any notice of deficiency to the person who made the determination that is the subject of the request.

Notice of review

- 7 The reviewer must serve a notice of review to the person who requested the review, and to the person referred to in section 6 (3), setting out,
- (a) in accordance with section 145 (1) of the *Forest Act*, the basis on which the review is to be conducted, and
 - (b) if there is to be an oral hearing, the date, time and location of the oral hearing.

Prescribed period for review decision

- 8 The prescribed period for the purposes of section 145 (3) (a) of the *Forest Act* is 60 days.

Division 3 – Procedures after Receipt of Request for Review under the *Forest Practices Code of British Columbia Act*

Reviews conducted under the *Forest Practices Code of British Columbia Act*

- 9 Sections 10 to 14 apply to request for reviews under the *Forest Practices Code of British Columbia Act*.

Notification of parties following receipt of a request for review

- 10 (1) The reviewer must acknowledge in writing any request for review.
- (2) If a request for review is
- (a) made by a requesting person, other than the board, the reviewer must give a copy of the request to
 - (i) the person who made the determination that is the subject of the request, and
 - (ii) the board, or
 - (b) made by the board, the reviewer must give a copy of the request to the person who made or failed to make the determination that is the subject of the request.

Deficient request for review

- 11 (1) If a request for review does not comply with section 3, the reviewer may give a written notice of deficiencies to the requesting person, inviting the requesting person, within a period specified in the notice, to submit further material remedying the deficiencies.
- (2) If the reviewer gives a notice of deficiencies under subsection (1), the requested review may proceed only after the earlier of
- (a) the expiry of the period specified in the notice of deficiencies, or
 - (b) the submission to the reviewer of further material remedying the deficiencies.

Designation of reviewer

- 12 On receipt of a request for review, the reviewer must designate the reviewer or reviewers and, if more than one, appoint one of them as the chair.

Notice of review

- 13 The reviewer must give a notice of review to the person who requested the review, and to the persons referred to in section 10 (2), setting out,
- (a) in accordance with section 129 (2) of the *Forest Practices Code of British Columbia Act*, the basis on which the review is to be conducted, and
 - (b) if there is to be an oral hearing, the date, time and location of the oral hearing.

Prescribed period for review decision

- 14 The prescribed period for the purposes of section 129 (6) (a) of the *Forest Practices Code of British Columbia Act* is 60 days.

Part 3

FOREST APPEALS COMMISSION PROCEDURE

Notice of appeal

- 15 The notice of appeal referred to in section 147 (1) of the *Forest Act* and section 131 (1) of the *Forest Practices Code of British Columbia Act*, and the notice of appeal for an appeal under section 41 of the *Range Act*, must be signed by, or on behalf of, the appellant and must contain all of the following information:
- (a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;
 - (b) the address for giving a document to, or serving a document on, the appellant;
 - (c) the grounds for appeal;
 - (d) a statement describing the relief requested.

Deficient notice of appeal

- 16 (1) If a notice of appeal does not comply with section 15, the commission may invite the appellant to submit further material remedying the deficiencies within a period specified in a written notice of deficiencies, by
- (a) serving the written notice of deficiencies on the appellant, if the appeal is under the *Forest Act* or *Range Act*, or
 - (b) giving the written notice of deficiencies to the appellant, if the appeal is under the *Forest Practices Code of British Columbia Act*.
- (2) If the commission serves or gives a notice of deficiencies under subsection (1), the appeal that is the subject of the notice of appeal may proceed only after the earlier of
- (a) the expiry of the period specified in the notice of deficiencies, or
 - (b) the submission to the commission of further material remedying the deficiencies.

Notification of parties following receipt of notice of appeal

- 17 The commission must acknowledge in writing any notice of appeal, and
- (a) in the case of an appeal under the *Forest Act* or *Range Act*, serve a copy of the notice of appeal on the deputy minister of the Ministry of Forests, and
 - (b) in the case of an appeal under the *Forest Practices Code of British Columbia Act*, give a copy of the notice of appeal to the deputy minister of the Ministry of Forests, in

addition to the persons referred to in section 131 (6) of that Act.

Procedure following receipt of notice of appeal

- 18 (1) Within 30 days after receipt of the notice of appeal, the commission must
- (a) determine whether the appeal is to be considered by members of the commission sitting as a commission or by members of the commission sitting as a panel of the commission,
 - (b) designate the panel members if the commission determines that the appeal is to be considered by a panel,
 - (c) subject to subsections (2) and (3), set the date, time and location of the hearing, and
 - (d) give notice of hearing to the parties if the appeal is under the *Forest Practices Code of British Columbia Act*, or serve notice of hearing on the parties if the appeal is under the *Forest Act* or *Range Act*.
- (2) The prescribed period for the purposes of section 148 (1) (b) of the *Forest Act* is 45 days after the commission receives the notice of appeal.
- (3) Despite subsection (2), the parties and the commission may agree to a period other than 45 days.

Panel chair determined

- 19 For an appeal that is to be considered by a panel of the commission, the panel chair is determined as follows:
- (a) if the chair of the commission is on the panel, he or she is the panel chair;
 - (b) if the chair of the commission is not on the panel but a vice chair of the commission is, the vice chair is the panel chair;

- (c) if neither the chair nor a vice chair of the commission is on the panel, the commission must designate one of the panel members to be the panel chair.

Additional parties to an appeal

- 20 (1) If the board is added as a party to an appeal under section 131 (7) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.
- (2) If a party is added to the appeal under section 131 (8) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

Intervenor

- 21 (1) If an intervenor is invited or permitted to take part in the hearing of an appeal under section 131 (13) of the *Forest Practices Code of British Columbia Act*, the commission must give the intervenor a written notice specifying the extent to which the intervenor will be permitted to take part.
- (2) Promptly after giving notice under subsection (1), the commission must give the parties to the appeal written notice
- (a) stating that the intervenor has been invited or permitted under section 131 (13) of the *Forest Practices Code of British Columbia Act* to take part in the hearing, and
 - (b) specifying the extent to which the intervenor will be permitted to take part.

Transcripts

- 22 On application to the commission, a transcript of any proceedings before the commission or the panel of the commission must be prepared at the cost of the person requesting it or, if there is more than one applicant for the transcript, proportionately by all of the applicants.

Prescribed period for appeal decision under the Forest Act

- 23 The prescribed period for the purposes of section 149.1 (3) of the Forest Act is 21 days after conclusion of the hearing.

Part 4

ANNUAL REPORT OF FOREST APPEALS COMMISSION

Content

- 24 (1) By March 31 of each year, the chair of the commission must submit the annual report for the immediately preceding calendar year required by section 197 (2) of the *Forest Practices Code of British Columbia Act*.
- (2) The annual report referred to in subsection (1) must contain
- (a) the number of appeals initiated during the year,
 - (b) the number of appeals completed during the year,
 - (c) the resources used in hearing the appeals,
 - (d) a summary of the results of the appeals completed during the year,
 - (e) the annual evaluation referred to in section 197 (1) (b) of the *Forest Practices Code of British Columbia Act*, and

- (f) any recommendations referred to in section 197 (1) (c) of the *Forest Practices Code of British Columbia Act*.

Part 5

TRANSITION

Administrative appeals

- 25 If, before June 15, 1995, a person contravenes a section of the *Forest Act* or *Range Act* that is repealed and replaced by a provision of the *Forest Practices Code of British Columbia Act*, and at the date of the contravention the *Forest Act* or *Range Act* provided a right of appeal in respect of contraventions of that section, the person may appeal a determination that they contravened the section and the appeal provisions of the *Forest Act* or *Range Act* that are in effect at the date of the determination apply to the appeal.